IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13680 of 2007
WITH
SPECIAL CIVIL APPLICATION No. 13681 of 2007
TO
SPECIAL CIVIL APPLICATION No. 13683 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANKAJKUMAR CHHOTALAL PANCHAL & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR ZUBIN F BHARDA for Petitioner(s) : 1 - 4.
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 19/07/2007

ORAL JUDGMENT

1. Rule. The learned AGP appearing on behalf of respondent No.1 and 2 is directed to waive service. There is no appearance on behalf of respondent No.3 despite service, though the affidavit-in-reply dated 19th June, 2007 is available on record.

2. The following prayers have been made in the petitions:

> *"8. In the above premises, the petitioners therefore prays as under:-*
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> *A. That this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ order or direction quashing and setting aside the action of the respondent No.2 of refusing to hear the petitioners on the question of approval dated 06.02.2006. This Honourable Court may further order the respondent No.2 to act strictly in accordance with the order dated 13.03.2007 passed by the Honourable Court in S.C.A. No.6058/2006 and after affording an opportunity of hearing to all the members of the managing committee of the respondent No.3- Trust, decide the question of*

upholding or cancelling the approval dated 06.02.2006 granted to the respondent No.3-Trust.

B. Pending admission and final hearing this Hon'ble Court be pleased to restrain the respondent No.2 from passing any order on the question of upholding or cancelling the approval dated 06.02.2006 granted to the respondent No.3-Trust.

C. That this Hon'ble Court be pleased to grant an ex-parte ad interim relief in terms of prayer (B) above may kindly be granted.

D. That this Hon'ble Court be pleased to grant such other and further relief as may be deemed fit and proper in the facts and circumstances of the case.

E. That this Hon'ble Court be pleased to award cost of the petition".

3. On 06.02.2006 respondent No.2, the District Education Officer, Dahod, passed an order appointing one Shri Bachubhai Kemabhai Bhabhor as Principal of school run by the Sukhsar Vibhag Kelavani Mandal

(Kelavani Mandal). On 08.02.2006, the said order was cancelled by respondent No.2.

4. The said order dated 08.02.2006 came to be challenged by one Shri Chhotalal Damodar Panchal as President of Sukhsar Vibhag Kelavani Mandal on the ground that respondent No.2 has violated the principles of natural justice while making order dated 08.02.2006 in as much as school management had not been granted an opportunity of hearing before the order dated 06.02.2006 was cancelled. After hearing the parties vide order dated 13.03.2007 made in Special Civil Application No.6058 of 2006 in the case of *Chhotalal Damodardas Panchal President V/s. State of Gujarat & 13* the following order came to be made by the Court.

> *"Therefore, according to my opinion, since the action or decision has been taken by the School Management which has been approved by the authority and that order of approval has been cancelled without giving any opportunity to the School Management, District Education Officer has violated the basic principles of natural justice while passing order*

dated 8/2/2006. Therefore, only on that ground, without considering the matter on merits, the order dated 8/2/2006 which has been against the principle of natural justice is required to be set aside. It is not the case of any of Respondents 5 to 14 that before passing order dated 8/2/2006 District Education Officer has given reasonable opportunity of hearing to petitioner School Management.

In result, the order dated 8/2/2006 passed by the District Education Officer, District Dahod, Dahod is hereby quashed and set aside with a direction to the District Education Officer, District – Dahod, Dahod to decide the afresh whether approval granted by the order dated 6/2/2006 is required to be cancelled or not, after giving reasonable opportunities of hearing to the petitioner, respondent no.4, respondent no. 5 to 14 within a period of four months from the date of receiving the copy of this order".

5. It appears that respondent No.2 initiated proceedings to grant hearing as directed by this Court and for this purpose issued Notice dated 26.04.2007 to the President of Kelavani Mandal to

remain present before respondent No.2 on 07.05.2007. It is further stated by the petitioners that the hearing was not conducted on 07.05.2007 but was adjourned to 21.05.2007. That on the said day i.e. 21.05.2007, the petitioners were not heard and without assigning any reasons two gentlemen, namely, Javabhai Dudhabhai Damor and Gobarbhai Kachrabhai Mali, who are not in any manner related with the affairs of the Kelavani Mandal, nor are the said two gentlemen members of the Managing Committee, were heard by respondent No.2 while the petitioners were refused an opportunity of hearing. It is in this context that the petitions have been filed.

6. The principal grievance made on behalf of the petitioners is that despite the petitioners being the members of the Managing Committee of the Kelavani Mandal respondent No.2 is not inclined to hear the petitioners before making a fresh order as directed by the Court in earlier proceedings. As against that, on behalf of respondent No.2, the learned AGP has submitted that respondent No.2 had no intention of ignoring and violating the directions made by this

Court in order dated 13.03.2007, but because there are two groups of persons who are claiming to be in the Management of the Trust, which is running the School, that respondent No.2 did not grant the petitioners any hearing.

7. Along with the affidavit-in-reply dated 26th June, 2007 filed by respondent No.2 he has placed on record a document described as record of proceedings and report qua hearing conducted on 07.05.2007 and 21.05.2007. On going through the said document it becomes apparent that respondent No.2 has confused the issue regarding appointment of Principal and cancellation of the said order of appointment without hearing school Management with the disputes inter-se amongst the Trustees of the Trust. Respondent No.2 has lost sight of the fact that it is not within the scope and powers of respondent No.2 to decide as to who is to be the President of the Kelavani Mandal. The respondent No.2 was required to grant a reasonable opportunity of hearing to the school management before making any decision as to whether the order of appointment of Principal of the school

was required to be cancelled or not.

8. In this connection, it is necessary to take note of the directions made by this Court in order dated 13.03.2007 in Special Civil Application No.6058 of 2006 whereunder the Court has categorically asked respondent No.2 to “decide afresh whether approval granted by the order dated 06.02.2006 is required to be cancelled or not”. Therefore, in the first instance, respondent No.2-Authority shall have to come to the conclusion, prima-facie, whether the order dated 06.02.2006 is required to be cancelled, and if yes, then grant hearing to the school management.

9. In the event, respondent No.2 finds it necessary to cancel the order dated 06.02.2006 then for the purpose of hearing the school management, respondent No.2 would be well advised to go by the entries recorded in PTR as certified by the Charity Commissioner without being influenced by applications of any change report, etc. which might have been made

by one or the other group.

10. In the aforesaid set of circumstances, respondent No.2 is directed to comply with the directions made by this Court on 13.03.2007 in its true import bearing in mind the spirit of the directions and hearing all the members of the Managing Committee of the Trust as reflected in the PTR as certified by the Charity Commissioner. For this purpose, respondent No.2 may directly write to the Charity Commissioner to forward a certified copy of the PTR without calling upon any one of the warring factions to produce PTR entries.

11. The petitions are accordingly disposed of in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

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